

**BILL TEXT:****STATE OF NEW YORK**

11076

**IN ASSEMBLY**

May 2, 2006

Introduced by M. of A. WEINSTEIN, ORTIZ -- Multi-Sponsored by -- M. of A. BRENNAN, CLARK, A. COHEN, COOK, DINOWITZ, GOTTFRIED, LAFAYETTE, LAVELLE, MILLMAN -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to permitting a plaintiff in a tort case to recover against a third party defendant in certain cases

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The civil practice law and rules is amended by adding a new  
2 section 1405 to read as follows:

3 § 1405. Permitting plaintiff to obtain an indirect tort recovery  
4 against a third party defendant in certain cases. Either a judgment  
5 creditor or a judgment debtor may recover on a judgment for contribution  
6 or indemnification regardless of whether the judgment debtor has satis-  
7 fied the underlying judgment for which contribution or indemnification  
8 is sought. Where such underlying judgment is unsatisfied, any payment  
9 made by the contributing or indemnifying party shall be made directly to  
10 the judgment creditor.

11 § 2. This act shall take effect on the first of January next succeed-  
12 ing the date on which it shall have become a law, and shall apply only  
13 to actions commenced on or after such date.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD16428-01-6

**SPONSORS MEMO:**

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(e)**

**BILL NUMBER:** A11076

REPLACEMENT 5/24/06

**SPONSOR:** Weinstein (MS)

**TITLE OF BILL:** An act to amend the civil practice law and rules, in relation to permitting a plaintiff in a tort case to recover against a third party defendant in certain cases

**PURPOSE OF BILL:** This bill would add a new Section 1405 to the Civil Practice Law and Rules (CPLR) to expressly permit a plaintiff in a tort case to recover directly against a third party defendant found liable to a defendant/third party plaintiff.

**SUMMARY OF PROVISIONS OF BILL:** Section 1: Adds a new Section 1405 to the CPLR to permit a plaintiff to recover on a judgement for contribution against the third party defendant, whether or not the defendant/third party plaintiff has satisfied the underlying judgment for which contribution or indemnification is sought.

Section 2: The effective date for this Act is on the first of January next succeeding the date on which it shall have become law and shall apply only to actions commenced on or after such date.

**EXISTING LAW:** Section 1401 of the CPLR provides, with certain exceptions under the General Obligations Law and the Workers' Compensation Law, that two or more persons who are subject to liability for damages for the same personal injury, injury to property or wrongful death, may claim contribution among them whether or not an action has been brought or a judgment has been rendered against the person from whom contribution is sought. Section 1403 of the CPLR provides that a cause of action for contribution may be asserted in a separate action or by cross-claim, counter-claim or third party claim in a pending action.

**JUSTIFICATION:** A plaintiff's recovery of a judgement that ultimately comes from a third party defendant should not depend on the fortuity of the solvency of the defendant/third party plaintiff. Accordingly, this measure would allow a plaintiff to recover on a judgment for contribution against the third party defendant, whether or not the defendant/third party plaintiff has satisfied the underlying judgment for which contribution or indemnification is sought. Thus, in the case where a defendant/third party plaintiff is insolvent and is unable to pay the judgment to the plaintiff the plaintiff will still recover directly that portion of the judgment, as determined by the principles of contribution and indemnification, owed by the third party defendant to the defendant/third party plaintiff. This measure would not alter in any way the substantive law of Workers' Compensation. The 1996 Omnibus Workers' Compensation Reform Act already limits claims for contribution and indemnification against an employer to only those cases involving "grave injuries." In cases where there are not grave injuries the employer is not liable as a matter of substantive law, and therefore this measure would not affect such employers at all.

**LEGISLATIVE HISTORY:** 2004; A.7493/S.5006 A. Calendar/S. Codes  
2003; A.7493/S.5006 A. Calendar/S. Codes

**FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:** None.

**EFFECTIVE DATE:** This Act will take effect on the first day of January next succeeding the date on which it shall become a law and shall apply only to actions commenced on or after such date.